

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION**

Mark Bellamy,)	
)	
Petitioner,)	Civil Action Nos.: 4:04-23270
)	and 4:04-23271
vs.)	
)	
United States District Court for)	
South Carolina, Florence Division)	
)	ORDER
Respondent.)	
_____)	

On December 16, 2004, Mark Bellamy (“petitioner”) commenced two pro se actions under 28 U.S.C. § 2241. The petitioner claims that trial counsel who represented him during his criminal proceedings was ineffective, trial counsel should not be able to file an affidavit in the action the petitioner filed under 28 U.S.C. § 2255, and the judge who presided over his criminal proceedings should not decide the petitioner’s 2255 action. On January 6, 2005, Magistrate Judge Thomas E. Rogers, III, issued a report analyzing the issues and recommending that both actions be dismissed without prejudice. Attached to the report and recommendation was a “Notice of Right to File Objections.” Pursuant to that Notice, the petitioner was provided ten days during which to file written objections to the report and recommendation and warned of the consequences resulting from a failure to do so. See 28 U.S.C. § 636(b)(1)(C). The petitioner did not file objections, and on March 3, 2005, the Court adopted the report and recommendation dismissing these actions. The Clerk entered judgment in both actions on March 3, 2005.

On March 15, 2005, the petitioner filed motions for reconsideration. The petitioner claims that he is entitled to an evidentiary hearing in his 2255 action because his trial counsel filed an affidavit in the 2255 action. As correctly determined in the report and recommendation,

the plaintiff must raise his ineffective assistance of counsel claims and evidentiary issues relating to the 2255 action in the 2255 action. These claims are not appropriate in a 2241 action. In re Vial, 115 F.3d 1192, 1194 n.5 (4th Cir. 1997).¹ Accordingly, the Court denies the motions for reconsideration.

AND IT IS SO ORDERED.



January 23, 2006
Charleston, South Carolina

C. WESTON HOUCK
UNITED STATES DISTRICT JUDGE

¹ On October 19, 2005, the Court dismissed the petitioner's 2255 action. Bellamy v. United States, Docket No. 4:04-22683-CWH.